

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-813

August 28, 2001

UNITEL, INC.
Proposed Rate Change

ORDER REJECTING
STIPULATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we reject the Stipulation filed in this case by Unitel and the Public Advocate because the rate design provisions of the Stipulation contradict the purpose of the access charge legislation, 35-A M.R.S.A. § 7101-8.

II. DISCUSSION

On July 27, 2001, Unitel and the Public Advocate, the only parties to this case, filed a Stipulation purporting to settle all of the issues in this rate case, including both revenue requirement and rate design. The Stipulation proposed a reduction in the revenue requirement of \$460,000.¹ It proposed to allocate this reduction entirely to its residential basic service customers under a plan labeled "Premium Plus." The Stipulation describes "Premium Plus" as follows:

[Residential] [c]ustomers subscribed to Premium Plus will be entitled to up to four hours of calling to any exchange in the State of Maine beyond their Premium Calling Area for an additional flat charge of \$3.50 per month. The customer shall pay a rate of \$0.08 per minute for any minutes in excess of the four hours. The Premium Plus Basic Service Option will be introduced by UniTel by packaging UniTel's existing Premium Service with an enhanced version of the Pine Tree Calling Plan. This packaging will be transparent to UniTel's customers and will be offered to them as a third (in addition to current Premium & Economy) basic service option. It is the intention of the parties that implementation of this additional service option will result in a decrease in net income of \$460,000.

We reject the Stipulation because of the rate design provisions. We find that this proposal is fundamentally contrary to the goals of the access charge reduction (or access parity) statute, 35-A M.R.S.A. § 7101-B, which requires that the intrastate access charges of all local exchange carriers be "less than or equal to interstate access

¹Because we reject the Stipulation for rate design reasons, we do not reach the question of whether the proposed revenue requirement is appropriate.

rates established by the Federal Communications Commission.” Unitel’s intrastate access rates are presently well in excess of the interstate access rates established pursuant to its concurrence in the interstate access tariff filed by the National Exchange Carriers Association (NECA) (the “NECA 5 tariff”). Because the Stipulation proposes to allocate all of Unitel’s decrease in revenue requirement to a reduction in retail toll rates for its own retail customers, none of the decrease would apply to its intrastate access charges.

The purpose of Section 7101-B is to reduce access costs to interexchange carriers (IXCs) directly, with the expectation that the IXCs, through the operation of the competitive retail toll market, will flow thorough those cost reductions in the form of lower retail toll rates. Much of this goal has been accomplished by access charge reductions put into effect by Verizon, which is the state’s largest local exchange carrier. Under the proposal, Unitel would not reduce its intrastate access rates at all. Those rates would remain substantially higher than its interstate access rates. Unitel instead would reduce the retail toll rates it charges to Unitel residential customers. A reduction in the retail toll rates offered by a telephone utility that is also an access provider to all IXCs simply does not satisfy the plain words of the statute requiring a reduction of wholesale access rates to interstate levels.

In a letter filed on August 10, 2001, Unitel attempted to justify the retail rate reduction on the ground that it would accomplish directly what the access parity statute could only accomplish indirectly. The access parity statute, however, requires as a direct action that access providers reduce access costs to competitive IXCs, with the indirect result that *all* (not just one) *competitive* providers of interexchange service will reduce retail toll rates. Herein lies one critical difference between what Unitel proposes and the statute intends. Under Unitel’s proposal, only one provider of toll services in Unitel’s service territory would (or, practically, would be able to) reduce retail toll rates. Other competitive IXCs would not have the same ability to reduce their retail toll rates because of continued high access charges. For the four hours of toll calling for \$3.50 that is proposed in the Stipulation, the resulting per-minute rate is only 1.46 cents. At the same time, Unitel and the Public Advocate propose to maintain Unitel’s intrastate access rate at about 11.3 cents per minute, thereby preventing competitive carriers from meeting the Unitel rate without losing money.

In the August 10 letter, Unitel claims that it understands the relationship between the statute and ultimate retail toll rates described above, but states that it

believes the question exists as to whether the reductions in intrastate access rates for independent telephone companies will actually result in corresponding reductions in toll rates. Unitel suggests that the Commission should confirm that access rate reductions are having (and will have) the desired effect before the IXCs receive additional reductions in rates, especially if the reductions are funded by local rate increases to customers.

It appears that Unitel is suggesting, in effect, that because access rates applicable in most of the rest of the State have been reduced, reducing Unitel's present high access rates would have little or no effect on retail toll rates. Unitel is in effect proposing that it and its customers should be free riders on the access reductions already put into effect not only by Verizon, but also by most other ILECs. Verizon has implemented three reductions in its intrastate access rates since 1998, and in 1999 and 2001 those rates were adjusted to levels that were at or below Verizon's interstate rates. In conjunction with these decreases, Verizon has increased its local basic rates in several steps for by a total of \$5.28 since 1999. Other independent ILECs have reduced access rates to NECA 5 levels pursuant to stipulated "stay-out provisions" and have clearly anticipated that they may need to increase basic rates when the stay-outs expire and they process rate cases. Still other independent ILECs (those in a situation similar to Unitel's) have processed rate cases in which they stipulated both to decreases in access charges and increases in local basic rates.

During this same period, toll rates for all customers in the state have declined. Unitel proposes that its customers should reap the benefits of the toll reductions that have and will occur as a result of access reductions by other ILECs, and that its customers should also enjoy additional toll reductions that will not be available for other customers in the state. At the same time it proposes that it should not reduce its intrastate access charges and that it should not increase basic rates for its customers. Unitel attempts to justify these results because it "questions" whether access charge reductions by independent telephone companies will result in "corresponding" reductions in retail toll rates.²

The policy advocated by Unitel and the Public Advocate in the Stipulation and by Unitel in the August 10 letter is unfair to other ILEC ratepayers in Maine, who have paid for decreases in toll rates through higher local rates. The policy is directly contrary to the access parity statute. It is also inconsistent with the policies we have adopted recently in the High Cost Universal Service Fund Rule, Chapter 288. While Chapter 288 does not apply directly to Unitel's immediate situation, it should be clear that an ILEC that continues to maintain access rates that exceed its interstate rates is in effect receiving universal service funding, albeit from IXCs and IXC customers only, rather than from the broad base of carriers that must contribute to the Maine Universal Service Fund (MUSF). Indeed, the Orders we have issued in cases similar to Unitel's have

²We recognize that the failure of one relatively small ILEC to reduce its access charges to the level required by the statute might have a sufficiently small revenue impact on IXCs so as not to result in intrastate toll rates being higher than they would be if there were full compliance with the statute. To allow an exception for that reason, however, would be an unfair and arguably even cynical application of the access parity statute.

stated the expectation that when the Fund is activated, those carriers will convert the amount of their access rates that exceed NECA 5 rates to universal support funding.³

Section 3(B) of Chapter 288 requires that, prior to receiving universal service funding, an ILEC must reduce its access charges to levels required by the access parity statute and must increase its local service rates to levels that are no less than those of Verizon. (The rule does permit ILECs to phase in the local rates.) Unitel's August 10 letter plainly recognizes these requirements of the rule,⁴ but fails to recognize that the same policies must logically apply to rate cases processed prior to the implementation of the MUSF.

Counsel for Unitel, as indicated by statements in the August 10 letter and because of his representation of other independent ILECs that are in the same situation as Unitel, and the Public Advocate, through participation in those same cases, are aware of stipulated rate designs that we have found acceptable. We find no sound basis for departing from our frequently and clearly articulated policies here.

Accordingly, we

1. FIND that the Stipulation filed in this case on July 27, 2001 is not a reasonable resolution of the rate design issues in this case, and we REJECT it;

2. ORDER the parties to file a new stipulation or a statement concerning their progress toward reaching a new stipulation on or before September 6, 2001,

Dated at Augusta, Maine, this 28th day of August, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

³*Hampden Telephone Company et al., Proposed Rate Change*, Docket No. 2000-807 et al., Order Approving Stipulation (May 4, 2001); *Mid-Maine Telephone Company, Proposed Rate Change*, Docket No. 2000-810 Order Approving Stipulation (July 11, 2001).

⁴The letter states:

Unitel is prepared to participate in the State USF program as it is implemented over the next few months so as to provide for future measured decreases in access rates coordinated with USF funding and required increases in local rates....

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.